RECENT DEVELOPMENTS AT ITC

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Important Developments in 2016

- Section 101 patentability challenges at the ITC
- ITC's accelerated disposition programs
  - 100-day Early Disposition Program
  - Expedited procedures for modifications and advisory opinions regarding new and re-designed products
- ITC's jurisdiction over electronic transmissions in wake of *Clear Correct v. ITC*
- PTAB proceedings and ITC investigations

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Section 101 Overview

- **35 U.S.C. § 101**: Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

- Judicial Exceptions:
  - Laws of Nature
  - Natural Phenomenon
  - *Abstract Ideas*

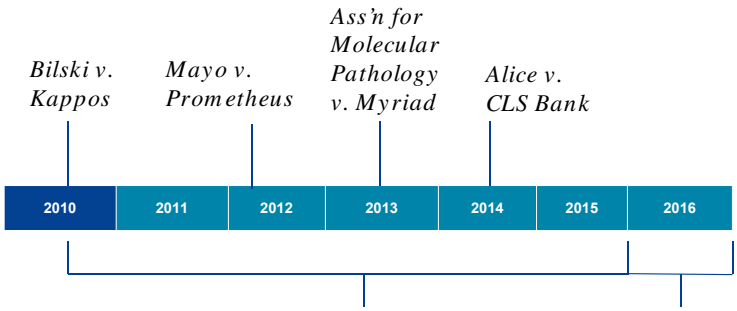
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Section 101 Overview

- *Bilski*
  - Preemption
  - Effective grant of a patent monopoly over an abstract idea
- *Mayo*
  - Abstract idea can be patentable if the claims recite an inventive concept
- *Alice*
  - Formalized the two-step framework
  - STEP 1: Claims directed towards patent-ineligible judicial exception
  - STEP 2: If so, do the claims have an inventive concept to "integrate the building blocks into something more."
    - Generic computer implementation not inventive

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Section 101 Patentability Challenges at ITC



8 final ITC decisions on Section 101

- **Only 1 finding of ineligibility**
- **No early decisions**

6 ITC decisions on Section 101

- **4 findings of ineligibility**
- **First ever early decision (100 days)**

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ITC Section 101 decisions in 2016

- *Network Devices*, Inv. 944 (validity upheld)
- *Light-Emitting Diode Products*, Inv. 947 (validity upheld)
- *Activity Tracking Devices* (Jawbone v. Fitbit), Inv. 963 (patents found invalid)
- *Wearable Activity Tracking Devices* (Fitbit v. Jawbone), Inv. 973 (certain patent claims found invalid)
- *Automated Teller Machines*, Inv. 972 (certain patent claims found invalid)
- *Portable Electronic Devices*, Inv. 994 (patent found invalid in 100-day proceeding)

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